

OPINION UNDER SECTION 74A

Patent	GB 2419068
Proprietor(s)	Mr Peter Leslie Turner
Exclusive Licensee	
Requester	Mr Peter Leslie Turner, on 9 May 2008
Observer(s)	
Date Opinion issued	16 July 2008

The request

1. The Comptroller has been requested under Section 74A(1)(a) of the Patents Act 1977 (as amended) to issue an Opinion as to whether an Internet based system known as "GoToMeeting" (RTM) offered for sale by Citrix (RTM) Systems, or a method performed by the system, constitutes an infringement of any claim of UK patent GB 2419068 B ("the Patent").
2. Accompanying the request is a brief description of the Patent and the GoToMeeting system together with three attachments. The attachments appear to show web pages from the GoToMeeting website (www.gotomeeting.com). The Requester concludes that the system infringes claims 1 and 9 at least of the Patent.

Observations

3. No observations on the request have been filed.

The Patent

4. Patent GB 2419068 B in the name of Peter Leslie Turner was granted on the 18 July 2007 and remains in force. It relates to a method and apparatus for enabling two nodes in a communications network to be connected, specifically two personal computers (PCs) over the Internet.

5. The background section of the Patent discusses the problems associated with conventional systems for setting up a connection between PCs, in particular, the requirement for a user to have knowledge of the Internet Protocol (IP) address associated with their PC. (Every device connected to the Internet has an associated IP address, usually expressed as a series of numbers, which is used when setting up a connection with other devices on the Internet. Knowledge of this address is therefore a prerequisite to establishing a connection.)
6. The Patent provides a simplified method and system for establishing a communication link between PCs. A host website is set up to facilitate communications. A user of a first PC wishing to communicate with a second PC connects to the website and the website sends a code to the first PC. The user communicates this code to a user of the second PC, for example by telephone. The user of the second PC also connects to the website and enters the code. The website uses the received code to establish a communication link between the first and second PCs. The code acts as a cross reference to the IP address of the first PC.
7. There are two independent claims, claim 1 relating to a method and claim 9 relating to a system. They read as follows:

“1. A method of establishing a communication link between a first communication node and a second communication node over a communications network, the method comprising the steps of: generating a code in response to the first communication node connecting to a website; sending the code to the first communication node; receiving the code from a second communication node connected to the website; and using the code to map an address of the first communication node with an address of the second communication node, thereby enabling a communication link to be established between the first communication node and the second communication node.”

“9. A system for establishing a communication link between a first communication node and a second communication node over a communications network, the system comprising: means for generating a code in response to the first communication node connecting to a website; means for sending the code to the first communication node; means for receiving the code from a second communication node connected to the website; and means for mapping an address of the first communication node with an address of the second communication node, thereby enabling a

communication link to be established between the first communication node and the second communication node.”

8. There are 16 claims in total with claims 2-8 dependant on claim 1, and claims 10-16 dependant on claim 9. Claims 2 and 10 specify that the code is communicated by the user of the first node to a user of the second node. Claims 3 and 11 specify that the mapping involves comparing the received code with a list of codes stored at the website, each stored code having a corresponding address for a corresponding first node. Claims 4 and 12 specify that each address is an IP address. Claims 5 and 13 specify that the code comprises one or more characters, with claims 6 and 14 further specifying an alphanumeric code. Claims 7 and 15 cover the possibility of connecting one or more further nodes using the code. Lastly, claims 8 and 16 specify that the network comprises the Internet.

The GoToMeeting system

9. I shall make it clear at the outset that I am basing this opinion on the evidence supplied by the Requester. I have not carried out any independent investigation of the GoToMeeting system either to substantiate the information provided by the Requester or to look further into how it operates but have taken the explanation and attachments at face value. Nevertheless I have visited the website in order to gain some background information on the services it provides. The website (www.gotomeeting.com) claims to provide a simple online meeting solution. It appears to offer a service in which a user is able to initiate an online meeting with others, or may log-in to join an existing online meeting.
10. The Requester describes the system with reference to the three attachments supplied with the request.
11. The first attachment (labelled Appendix 1) shows a webpage of the GoToMeeting website providing a user with a “meeting ID”. Some of the detail shown in the attachment is a little unclear but I am able to make out the text “Invite People!” and “Call the person and say:” followed by a “meeting ID” comprising a string of numbers. The Requester has added a note to the attachment: “This code is generated in response to the first user connecting to the website”.
12. The second attachment (Appendix 2) shows a view of a GoToMeeting webpage and a window in the foreground requesting user input. The window has a title bar “Join a meeting – GoToMeeting” and contains the text “Please enter the meeting ID”. A note has been added by the

Requester as follows: "The code received from the first user, i.e. the meeting ID, is entered here by the second user."

13. The detail shown in the third attachment (Appendix 3) is also a little unclear but I am able to make out a meeting ID containing the same string of numbers as that shown in Appendix 1 together with a GoToMeeting logo. The Requester has noted on this attachment: "The code which was generated by the host and keyed in by the participant is shown for reference on the participants screen".
14. I note that the address of the GoToMeeting website ends in ".com". As I understand it, the ".com" domain does not in itself determine the geographic location of the website. I will come back to this point later.

The law

15. The meaning of infringement is covered by Section 60 of the Patents Act 1977 (as amended). Section 60(1) states that:

"Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say –

- (a) where the invention is a product, he makes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;*
- (b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;*
- (c) where the invention is a process..."*

The approach I shall take

16. In order to form an opinion as to whether the Patent is infringed I must first construe the claims of the Patent and then determine whether the GoToMeeting system as described falls within the scope of the claims. If the GoToMeeting system does not have all the features required by the claims then there can be no infringement of the Patent. If, on the other hand, the system does have all of the required features then I must go on to consider whether it falls within the terms of Section 60.

Construction of the claims

17. In construing the claims I shall use the standard principles of claim construction as set out in *Kirin-Amgen and others v Hoechst Marion Roussel Limited and others* [2005] RPC 9. I must put a purposive construction on the claims, interpret them in light of the description and drawings as instructed by Section 125(1) and take account of the Protocol to Article 69 of the EPC. Put simply, and as emphasised by Hoffmann LJ in that judgment, I must decide what a person skilled in the art would have understood the patentee to have used the language of the claims to mean.
18. Upon reading the claims I think they would in the main be clear to a skilled person and present no difficulties as to their meaning; they can be read literally (the terms “map” and “mapping” being used in a mathematical sense). However, there does appear to be an inconsistency between the claims and a brief passage towards the end of the description which I need to consider.
19. Claim 1 includes the step of “receiving the code from a second communication node connected to the website” and claim 9 has the feature “means for receiving the code from a second communication node connected to the website”. Thus both independent claims refer to a connection between the second node and the website. A passage described on page 12, lines 20-34 envisages the possibility of the code and associated IP address being broadcast to the second node “thereby permitting the IP address to be mapped at the second node 5, *without the second node 5 having to communicate with the server node 9.*” (emphasis added). In this set-up it seems the second node would not have to connect to the website to communicate the code. The description goes on to say “However, the mapping is preferably carried out at the server node 9 as discussed in Figures 4 and 5, since this allows the server node 9 to maintain control over the establishment of a connection between the first node 3 and the second node 5.”
20. In the circumstances, what would a skilled person understand the patentee to be using the language of the claim to mean? It is worth noting a few lines by Hoffmann LJ from the above judgment:

“33. ... There is no presumption about the width of the claims. A patent may, for one reason or another, claim less than it teaches or enables.

34. “Purposive construction” does not mean that one is extending or going beyond the definition of the technical matter for which the patentee seeks protection in the claims.”

21. In my view a skilled person would not consider the requirement in the claims for the second node to connect to the website to be in any way arbitrary or unintentional. The clarity of the claims is such that the skilled person would understand that, for whatever reason, the patentee must have intended the invention to be limited in this way. The inconsistency with the description may well be viewed as unfortunate, but I do not think it is something which would prompt a skilled person to depart from a literal interpretation of the claims. I note that the Requester does not raise any issue over the construction of the claims and includes the feature of the second node connecting to the website in their analysis so my assessment will be consistent with the requester's interpretation of the claim. Even if I am wrong on this point, I do not think it would alter the conclusion I arrive at.

Does the GoToMeeting system fall within the Patent?

22. Having construed the claims I will now determine whether the GoToMeeting system falls within their scope. As noted above, for the purposes of this opinion I will take the Requester's explanation of the system at face value.
23. Turning to claim 1, the first step is "generating a code in response to the first communication node connecting to a website". The first attachment shows a meeting ID together with a prompt to contact others with this information. The meeting ID shown is "856-056-389" and so can be regarded as a type of code. The Requester states that the code (meeting ID) is generated in response to the user connecting to the website and, taking this at face value, I am of the opinion that the GoToMeeting system satisfies this step. The second step in claim 1 of "sending the code to the first communication node" is clearly satisfied by the display of the meeting ID on the webpage.
24. The third step of claim 1 is "receiving the code from a second communication node connected to the website". The second attachment shows a window entitled "Join a meeting – GoToMeeting" requesting entry of the meeting ID. The Requester states that the second user enters the requested code. Again, on the evidence supplied to me, I think this step is also satisfied.
25. The final step of claim 1 requires "using the code to map an address of the first communication node with an address of the second communication node, thereby enabling a communication link to be established between the first communication node and the second communication node". I consider this step to be implicit in the GoToMeeting system. It is clear from the screenshots that a code is

used when setting up an online meeting and that a user is asked for a code when joining a meeting. Given that the aim of the system is to enable users to conduct an online meeting, the system must employ a form of mapping based on the code and the network addresses of the users' computers in order to set up a communication link.

26. Therefore, on the balance of probabilities, I consider the GoToMeeting system to fall within the scope of claim 1. From the above analysis it follows that the GoToMeeting system also falls within the scope of claim 9.
27. For completeness I will also consider the other claims. The webpage shown in the first attachment suggests that the user of the first communication node communicates the code to a user of the second communication node as required by claims 2 and 10. No doubt the GoToMeeting system is capable of supporting numerous meetings and so would necessarily implement a stored list or table of codes as required by claims 3 and 11. The GoToMeeting system is Internet based and so also falls within the scope of claims 4, 8, 12 and 16. In the specific example provided by the Requester the meeting ID comprises a string of digits which falls within the scope of the term "characters" in claims 5 and 13. On the evidence available to me the GoToMeeting system does not fall within the scope of claims 6 and 14 which specify an alphanumeric code, i.e. a code comprising both letters and digits.
28. In summary, I consider the GoToMeeting system to fall within the scope of claims 1-5, 7-13, 15 and 16.

The infringement position

29. Having established that the GoToMeeting system falls within the scope of claims 1-5, 7-13, 15 and 16, I now need to consider whether the GoToMeeting system constitutes an infringing act under Section 60(1).
30. Section 60(1) requires that the infringing act, whether it is the use of a product or a process, must be "in the United Kingdom". If the GoToMeeting system is implemented in the UK, that is the computer or server hosting the website is located in the UK, it follows that the system infringes claims 1-5, 7-13, 15 and 16 of the Patent under Sections 60(1)(a) and 60(1)(b). However, as noted earlier, it is not possible to determine the geographic location of the GoToMeeting system from the website address alone, and no evidence has been provided in this respect. I therefore also need to consider what the infringement position would be in the event that the system is based outside the UK but available to users within the UK.

31. The judgment of the Court of Appeal in *Menashe Business Mercantile Ltd v William Hill Organization Ltd* [2003] RPC 31 provides guidance on this matter. The claimed invention in that case related to a gaming system including a host computer in communication with one or more terminal computers, and a program for operating the terminal computer. The alleged infringer provided a program in the UK which turned a user's computer into the terminal computer, but the host computer was located abroad. The court considered that locating the host computer abroad provided no defence to an allegation of infringement. Lord Justice Aldous stated:

"32 The claimed invention requires there to be a host computer. In the age that we live in, it does not matter where the host computer is situated. It could be in the United Kingdom, on a satellite, or even on the border between two countries. Its location is not important to the user of the invention nor to the claimed gaming system. In that respect, there is a real difference between the claimed gaming system and an ordinary machine. For my part I believe that it would be wrong to apply old ideas of location to inventions of the type under consideration in this case. A person who is situated in the United Kingdom who obtains in the United Kingdom a CD and then uses his terminal to address a host computer is not bothered where the host computer is located. It is of no relevance to him, the user, nor the patentee as to whether or not it is situated in the United Kingdom.

33 If the host computer is situated in Antigua and the terminal computer is in the United Kingdom, it is pertinent to ask who uses the claimed gaming system. The answer must be the punter. Where does he use it? There can be no doubt that he uses his terminal in the United Kingdom and it is not a misuse of language to say that he uses the host computer in the United Kingdom. It is the input to and output of the host computer that is important to the punter and in a real sense the punter uses the host computer in the United Kingdom even though it is situated in Antigua and operates in Antigua. In those circumstances it is not straining the word "use" to conclude that the UK punter will use the claimed gaming system in the United Kingdom, even if the host computer is situated in, say, Antigua. Thus the supply of the CD in the United Kingdom to the UK punter will be intended to put the invention into effect in the United Kingdom."

32. Although the above case is concerned with contributory infringement under Section 60(2), the reasoning would also seem to apply to primary (or direct) infringement under Section 60(1). Consequently, even if the GoToMeeting system is based abroad, for example in the United States, I do not think it would escape Section 60(1). It would still be possible to

use the GoToMeeting system in the UK, and a user in the UK would still derive the benefit of a communication link to another user. Furthermore, if the GoToMeeting system involves some form of program delivery to a user's PC, for example by CD or download, then contributory infringement under Section 60(2) may also arise.

33. Briefly, going back to the issue I raised during the construction of the claims, if the feature of the second node connecting to the website is instead interpreted as optional, this has the effect of widening the scope of the claims and the GoToMeeting system still infringes.

Opinion

34. I conclude that claims 1-5, 7-13, 15 and 16 of patent GB 2419068 B are infringed by the GoToMeeting system.

NOTE

This opinion is not based on the outcome of fully litigated proceedings. Rather, it is based on whatever material the persons requesting the opinion and filing observations have chosen to put before the Office.

Matthew Nelson
Examiner